IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 723 OF 2001

Cornel Anjan D' ouza & ors. ... Appellants
VS.
Alex Joseph D'Souza & ors... Respondents

R.A. Thorat for appellants

CORAM: D. G. KARNIK **J.**

DATE: December 12, 2006

P.C.:

1. This appeal is directed against the order dismissing Chamber Summons No. 1288 of 2000 taken out by the appellant in the trial court. The chamber summons was for the purpose of condonation of delay in making an application for setting aside the abetment of the suit against defendant no.16 in the suit. However, a composite prayer was made for condonation of delay and also for setting aside the abetment of the suit against defendant no.16.
2. By the impugned order the trial court dismissed the motion inter alia on the ground that no explanation was offered by the appellants for the condonation of delay. Thus the trial court dismissed the chamber summons on the ground that

the delay cannot be condoned.

3. In view of the fact that an application refusing to condone delay in making the application for setting aside the abetment is not appealable under Order 43 of Civil Procedure Code , the learned counsel for appellant seeks leave to withdraw the appeal with liberty to challenge the impugned order in the appropriate proceedings. Such leave can be granted subject to law of limitation. Leave is accordingly granted subject to law of limitation. Appeal is dismissed as withdrawn with liberty as above.

(D.G. KARNIK J.)